IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

Crl.MC.No. 1683 of 2007()

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CRIME NO.205/2007 OF PUTHEN CRUZ POLICE STATION

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PETITIONERS:

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1. THABITHA, W/O.JOY,
PATHAPPILLIL HOUSE,
MARANGATTULLY KARA,
THIRUVANIYOOR VILLAGE.

2. SNEHA JOY, D/O.JOY,
PATHAPPILLIL HOUSE,
MARANGATTULLY KARA,
THIRUVANIYOOR VILLAGE.

BY ADV. SRI.C.K.SREEJITH

RESPONDENT:

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STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J.**

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Crl.M.C.No.1683 of 2007

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Dated this the 25th day of May 2007

**O R D E R**

The petitioners - mother and daughter face allegations interalia under the provisions of Section 3(1)XI of Scheduled Castes&Scheduled Tribes (Prevention of Atrocities) Act. The petitioners apprehend imminent arrest. They are not in a position to apply for anticipatory bail in the light of Section 18 of the Scheduled Castes&Scheduled Tribes (Prevention of Atrocities) Act. They are willing to surrender before the learned Magistrate but they apprehend that if they surrender, their application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In particular, they apprehend that the offence being one triable exclusively by the special/Sessions Court, the learned Magistrate may not consider their application for bail on merits.

2. The petitioners are women. They are entitled to the compassion of the law in favour of the weak as reflected in S.437 Cr.P.C. I have no reason to assume that the learned Magistrate

would not consider the application for bail on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339]. The apprehension that the learned Magistrate may consider himself incompetent to grant bail because the offence is triable by a court of Session is not justified at all. This court had time and again repeated that Magistrates cannot abdicate his powers and responsibilities to consider the application for bail on merits. The decisions in Ali v. State of Kerala [2000(2) KLT 280, Shanu v. State of Kerala [2000(3) KLT 452, Krishnakumar v. State of Kerala [20005(1) KLD(Cri.)42] and P.P.Kader v. State of Kerala [2005(1) KLD(Cri.)250] lay down this proposition beyond any pale of controversy. I have no reason to assume that the learned Magistrate does not know the law or shall not follow the law.

3. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail,

after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

Hand over copy of this order to the learned counsel for the petitioner today itself.

**(R.BASANT, JUDGE)**

jsr

// True Copy// PA to Judge

**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF APRIL 2007